

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

DECLARATION OF JEFFREY M. GOULD

I, Jeffrey M. Gould, hereby declare pursuant to 28 U.S.C. § 1746 that the following statements are true and correct to the best of my personal knowledge and belief:

1. I am Senior Counsel Oppenheim + Zebrak, LLP, and am admitted to practice law in the District of Columbia, among other jurisdictions. I am counsel for Plaintiffs in the above-captioned case.

2. I submit this declaration in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment. I have knowledge of the facts stated herein based on personal knowledge. If called upon to do so, I could and would testify competently to the matters as stated herein.

3. Attached hereto are true and correct copies of the following exhibits:

Exhibit	Description
1	Cox document entitled "Cox High Speed Internet Data Usage Assessment Mid-term Readout" (PX 212)
2	Relevant excerpts from the April 29, 2019 deposition of Jorge Fuenzalida
3	Relevant excerpts from the May 9, 2019 deposition of William Basquin
4	Cox e-mail from M. Mathews to J. Sikes, HRD-TOC (CCI-Hampton Roads), and CCI - Abuse Corporate, RE: Request for Termination - CATS Ticket 18640545 (PX 342)

Exhibit	Description
5	Cox e-mail from J. Zabek to HRD-TOC (CCI Hampton Roads) and CCI - Abuse Corporate, cc: CCI - TOC RE: CATS 7442149 (PX 277)
6	Relevant excerpts from the May 6, 2019 deposition transcript of Vance Ikezoye, Audible Magic's 30(b)(6) corporate designee
7	Declaration of George P. McCabe, Ph.D., filed in Support of Plaintiffs' Motion for Summary Judgment, ECF No. 325-2
8	Declaration of Anish Patel, filed in support of Plaintiffs' Motion for Summary Judgment, ECF No. 325-4
9	Chat log conversation, produced by Cox, with joesikesatl on G Chaos L2 (aim) (PX 305)
10	Declaration of Samuel Bahun, filed in support of Plaintiffs' Motion for Summary Judgment, ECF No. 325-6
11	Declaration of Barbara Frederiksen-Cross, filed in support of Plaintiffs' Motion for Summary Judgment, ECF No. 325-7
12	Declaration of David Kokakis, filed in support of Plaintiffs' Motion for Summary Judgment, ECF No. 325-8
13	Cox e-mail from J. Zabek to A. Dameri and CCI - Abuse Corporate, cc. C. Bums, RE: Customers Terminated for DMCA (PX 266)
14	Declaration of Jeremy Blietz, filed in support of Plaintiffs' Motion for Summary Judgment, ECF No. 325-10
15	Declaration of William Lehr, Ph.D., filed in support of Plaintiffs' Motion for Summary Judgment, ECF No. 325-11
16	Declaration of Samuel Bahun, filed in support of Plaintiffs' Opposition to Cox's Motion for Discovery Sanctions and to Preclude use of MarkMonitor Evidence, ECF No. 352-1
17	Declaration of Vance Ikezoye, filed in support of Plaintiffs' Opposition to Cox's Motion for Discovery Sanctions and to Preclude use of MarkMonitor Evidence, ECF No. 352-2
18	Declaration of Steven Marks, filed in support of Plaintiffs' Opposition to Cox's Motion for Discovery Sanctions and to Preclude use of MarkMonitor Evidence, ECF No. 352-3
19	Relevant excerpts from the May 29, 2019 deposition transcript of Dr. Nick Feamster, Cox's technical expert
20	Relevant excerpts from PX 33, MarkMonitor Case Packages
21	Relevant excerpts from the June 24, 2019 deposition transcript of Christian Tregillis
22	Relevant excerpts from the June 5, 2019 deposition transcript of Brent Beck

Exhibit	Description
23	Declaration of Brent Beck In Support Of Cox's Opposition To Plaintiffs' February 1, 2019 Motion To Compel (PX 362)
24	Stipulated Order to Produce Identifying Information Concerning Certain Cox Business Subscribers (ECF No. 140)
25	Rebuttal Report of Christian Tregillis, dated May 15, 2019
26	E-mail from Cox, forwarding one of MarkMonitor's infringement notices to a subscriber (COX_SONY_00717187)
27	E-mail from T. Williams to J. Zabek, RE: "Question for ya" (PX 264)
28	E-mail from J. Zabek to S. Wilmmer, RE: Archer Incident IR-155: Possible BitTorrent Use on Internal Network - Closed (PX 318)
29	Cox email from J. Sikes to HRD-TOC (CCI-Hampton Roads) and CCI - Abuse Corporate, RE: Termination Review-19751123 (PX 346)
30	Cox email from J. Sikes to HRD-TOC (CCI-Hampton Roads) and CCI - Abuse Corporate, RE: Termination Review - 19991279 (PX 345)
31	Cox Communications Acceptable Use Policy (PX 175)
32	Cox Business Acceptable Use Policy (PX 178)
33	Cox Communications Acceptable Use Policy (PX 184)
34	Email from M. Carothers to CCI - DAB-Abuse Team, RE: DAB Abuse call meeting minutes 1/12/10 (PX 240)
35	Cox Communications, Inc.'s First Supplemental Responses to BMG Plaintiffs' First Set of interrogatories, with May 29, 2015 Verification (PX-351)
36	Cox Communications, Inc.'s Third Supplemental Responses to BMG Plaintiffs' First Set of Interrogatories, with August 27, 2015 Verification (PX 353)
37	Summary of Infringement Notices to Cox and Cox Responses (PX 12)
38	Relevant excerpts from Cox Communications Abuse Department CBS Ticket Handling Procedures (PX 164)
39	Relevant excerpts from Cox Communications Abuse Department Ticket Handling Procedures (PX 165)
40	Relevant excerpts from Cox Communications Abuse Department Ticket Handling Procedures (PX 167)
41	Relevant excerpts from Cox Communications Customer Safety and Abuse Operations Residential Abuse Ticket Handling Procedures (PX 179)
42	Cox email from B. Beck to J. Sikes, cc: M. Carothers, J. Zabek, S. Roper, and D. Dee, RE: DMCA complaint spike? (PX 335)
43	Cox e-mail from R. Vredenburg to M. Moy, FW: DMCA Terminations (PX 253)

Exhibit	Description
44	Cox e-mail from J. Zabek to CCI - Abuse Corporate RE: [Account] (COX_SONY_00511210)
45	Cox document entitled "DMCA rules for reporting to Cox" (COX_SONY_00006080)
46	Relevant excerpts from the June 25, 2019 deposition transcript of Jason Zabek
47	Declaration of Jason Zabek in Support of Defendants' Opposition to BMG Plaintiffs Motion for Partial Summary Judgment (PX 357)
48	Cox 's Residential Non-Pay Disconnect volumes by month (PX 460)
49	Cox's Second Supplemental Responses to Plaintiffs' First Set of Interrogatories (Nos. 1-12) to Defendants, with verification (PX 365)
50	E-mail thread produced by Cox, with Jason Zabek re: Rightscorp notices (PX 300)
51	Relevant excerpts from the June 9, 2015 deposition transcript of Randall Cadenhead
52	Cox e-mail from J. Sikes to B. Beck, cc: J. Zabek, CCI - Abuse Corporate and CCI - ATL - Data Ops - CATS, RE: CATS Suspend vs Terminate (PX 294)
53	Cox e-mail from A. Thompson to HRD-TOC (CCI-Hampton Roads) and CCI Abuse Corporate, RE: Termination Review - 19029047 (PX 347)
54	Chat log conversation with joesikesatl on G Chaos L2 (aim) (PX 303)
55	Relevant excerpts from the May 8, 2019 deposition of Clint Summers
70	Certificate of Registration (Form SR), Registration number SR 636-832
71	Certificate of Registration (Form SR), Registration number SR 390-774

4. Pursuant to the Court's order granting Plaintiffs a limited exemption from filing its summary judgment exhibits through ECF (ECF No. 246), true and correct copies of the following exhibits were previously submitted via hard drive as exhibits to the Gould Declaration in support of Plaintiffs' Motion for Summary Judgment (ECF No. 326) ("Gould I"). These exhibits are located on the hard drive with the Gould I Exhibit Numbers provided in the chart below. Plaintiffs have not re-submitted these exhibits due to their volume; however, Plaintiffs can provide additional copies at the Court's request if necessary or helpful.

Exhibit	Description	Gould I Ex. No.
56	PX 14, Notice Data spreadsheet	Gould I Ex. 7
57	Cox Ticket Data, produced by Cox (PX 19)	Gould I Ex. 39
58	Subscriber ID Data correlating Cox subscribers' ICOMS IDs to Plaintiffs' infringement notices, produced by Cox (PX 23)	Gould I Ex. 40
59	Filtered excerpt of Cox's Ticket Data (PX 19) showing infringement tickets for the subscriber with ICOMS ID 541069122908 and IP address 72.220.6.78.	Gould I Ex. 45
60	Filtered excerpt of RightsCorp notice data (PX 34) between Aug. 5, 2013 and March 6, 2014 for the subscriber with IP address 72.220.6.78	Gould I Ex. 46
61	Filtered excerpt of Cox's Ticket Data (PX 19) showing infringement tickets for the subscriber with ICOMS ID 333044803001 and IP address 174.67.242.185.	Gould I Ex. 47
62	Filtered excerpt of RightsCorp notice data (PX 34) between May 17, 2014 and Dec. 28, 2014 for the subscriber with IP address 174.67.242.185	Gould I Ex. 48
63	ICOMS Billing Data, produced by Cox (PX 471)	Gould I Ex. 50
64	ICOMS Billing Data, produced by Cox (PX 472)	Gould I Ex. 51
65	ICOMS Billing Data, produced by Cox (PX 473)	Gould I Ex. 52
66	ICOMS Billing Data, produced by Cox (PX 474)	Gould I Ex. 53
67	Audio Files (PX 39)	Gould I Ex. 13
68	Audible Magic data spreadsheet (PX 11)	Gould I Ex. 2
69	2013-2014 Cox 2013-2014 List Prices (PX-463)	Gould I Ex. 49
72	Declaration of Wade Leak (ECF No. 325-3)	
73	Declaration of Alasdair McMullan (ECF No. 325-9)	
74	Declaration of Steven Poltorak (ECF No. 325-5)	

5. Plaintiffs, through counsel, have reviewed the document productions by Cox, MarkMonitor and the Recording Industry Association of America ("RIAA") in this litigation. No counter-notifications pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512(g)(3) were identified.

6. A true and correct copy of an e-mail from Cox Customer Safety (abuse@cox.net) to a subscriber is attached hereto as Exhibit 26 (COX_SONY_00717187). Plaintiffs, through counsel, have reviewed the document productions by RIAA and MarkMonitor in this litigation. No communications from a Cox subscriber to either RIAA or MarkMonitor disputing an infringement notice were identified.

7. On May 6, 2019, Cox took the deposition of Vance Ikezoye, Audible Magic's 30(b)(6) corporate designee. I have reviewed the transcript from the deposition. The Audible Magic Spreadsheet (REV00003444) was not identified during any questions or answers during Mr. Ikezoye's deposition, and it was not entered as an exhibit. Cox did not authenticate the Audible Magic Spreadsheet during that deposition.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 24, 2019 in Washington, District of Columbia.



Jeffrey M. Gould
Counsel for Plaintiffs